



*Tailgating Over the Valley*, by Martin J. Cervantez, oil on canvas, Afghanistan, 2009.  
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# Chapter 6

## THE MILITARY FORENSIC PSYCHIATRY TRAINING PROGRAM

KAUSTUBH G. JOSHI, MD, FAPA\*; DAVID M. BENEDEK, MD<sup>†</sup>; AND DAVID E. JOHNSON, MD<sup>‡</sup>

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### SUMMARY

\*Forensic Psychiatrist, Department of Psychiatry, Kerrville State Hospital, 721 Thompson Drive, Kerrville, Texas 78028

<sup>†</sup>Colonel, Medical Corps, US Army; Professor/Deputy Chair, Department of Psychiatry and Associate Director, Center for the Study of Traumatic Stress, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Building B, Bethesda, Maryland 20814

<sup>‡</sup>Lieutenant Colonel, Medical Corps, US Army; Program Director, National Capital Consortium Forensic Psychiatry Fellowship, Walter Reed National Military Medical Center, Dalecarlia Annex, 6000 MacArthur Boulevard, Room 1099D, Bethesda, Maryland 20816; formerly, Chief, Behavioral Health, Fort Irwin, Dr. Mary E. Walker Center, 170 Outer Loop Road, Fort Irwin, California

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## INTRODUCTION

Military forensic psychiatry is an intersection of three different cultures: psychiatry, law, and the military.<sup>1</sup> Military forensic psychiatry is a relatively new field of study compared to its civilian counterpart. In addition to “bread and butter” evaluations found in both arenas (eg, competency to stand trial and criminal responsibility evaluations), military forensic psychiatry involves evaluations that may not be found in the civilian sector such as command-directed mental health evaluations. General psychiatrists often conduct forensic evaluations, and it is highly recommended that all those who do complete a 1-year forensic psychiatry fellowship due to the increasing complexity of mental health law. At this time, there are 36 forensic psychiatry fellowships accredited by the American Council on Graduate Medical Education.<sup>2</sup> Of these fellowships, 35 are civilian-based programs and only

one is a military-based forensic psychiatry fellowship program (the National Capital Consortium [NCC] at Walter Reed National Military Medical Center).

Forensic training programs combine an experiential core, didactics, and a meaningful scholarly experience. The experiential core should include forensic evaluation of subjects of both genders (including adolescent, adult, and geriatrics groups) in both civil and criminal context, consultation to general psychiatric services on issues related to the legal regulation of psychiatric practice, treatment of persons involved in the criminal justice system, and experience in courtroom testimony.<sup>3</sup> The didactics section must include a psychiatric curriculum, a law curriculum related to forensic psychiatry, a civil law curriculum, a criminal law curriculum, and conferences in forensic psychiatry (including discussion of landmark cases).<sup>3</sup>

## CIVILIAN PROGRAMS

The clinical experience and didactics in civilian forensic psychiatry fellowship programs are very similar to each other. An example of a civilian program is the Palmetto Health Alliance/University of South Carolina School of Medicine program.<sup>4</sup> In this program, fellows conduct competency to stand trial, criminal responsibility, and competency to be executed evaluations of criminal defendants and inmates from South Carolina and provide testimony in court. They also provide forensic consultation to other psychiatrists in the department dealing with treatment refusals, violence risk assessment, and other forensic issues.

Fellows participate in the evaluation of sex offenders for civil commitment as sexually violent predators. They also treat severely mentally ill inmates who are hospitalized, learning how to establish a therapeutic alliance with incarcerated individuals as well as balance the therapeutic needs of their patients with the institution’s security needs. Fellows are also involved with civil commitment of individuals who are mentally ill and dangerous to themselves or others. The program also provides comprehensive didactics, as required by the American Council on Graduate Medical Education, including discussion of landmark cases.

## THE NATIONAL CAPITAL CONSORTIUM MILITARY FORENSIC PSYCHIATRY PROGRAM

The NCC program, the only American Council on Graduate Medical Education-accredited military-based forensic psychiatry fellowship program in the United States, was initially accredited in 1998 and has received continuing accreditation since that time.<sup>2</sup> In addition to clinical experiences and didactics similar to those in civilian programs, the NCC also includes military-unique evaluations.<sup>5</sup>

### Center for Forensic Behavioral Sciences

The NCC Forensic Psychiatry Fellowship is part of a stand-alone behavioral health department called the Center for Forensic Behavioral Sciences (CFBS) located at Walter Reed National Military Medical Center. CFBS is the Department of Defense’s (DoD’s) premier source of behavioral science expertise for military justice, law

enforcement, and intelligence operations. On a local level, it serves as the Forensic Psychiatry Service for all medico-legal consultations arising from the inpatient and outpatient services at Walter Reed. CFBS accepts requests for legal consultation from all US military jurisdictions, both within the United States and overseas.<sup>5</sup> Demographics of criminal clinical cases reflect those of the US military population. The cases include active duty service members ranging in age from 18 to older than 50 involved in a variety of property crimes, drug-related offenses, child sexual abuse, rape, assault, and murder, as well as uniquely military offenses (eg, malingering, absence without leave, or desertion).<sup>5</sup> These cases involve either conducting a sanity board or participating as a defense expert witness, government expert witness, or consultant. “Sanity board” is military jargon for a competency to stand trial and

criminal responsibility evaluation. These evaluations are governed by the *Manual for Courts-Martial*<sup>6</sup> and discussed in further detail in chapter 4 in this book. Trainees have the opportunity to work as consultants with the Federal Bureau of Investigation on active cases. They also gain exposure to CFBS's growing role in consulting on investigations into potentially dangerous service members ("insider threats") with military criminal investigative bodies, such as the Army Criminal Investigation Division and the Naval Criminal Investigative Service.

### Authority for Military Criminal Law

Fellows are expected to develop great familiarity with military criminal law. Military criminal law has hierarchical sources of rights. In *United States v Marrie*, the court stated that the sources are the US Constitution, federal statutes (including the Uniform Code of Military Justice [UCMJ]), executive orders containing the Military Rules of Evidence, DoD directives, service-specific directives, and federal common law.<sup>1,7</sup> The normal rules of statutory construction state that the highest source of authority will be paramount unless a lower source creates rules that are constitutional and provide for greater rights for the individual.<sup>1</sup> The paramount source for military criminal law is the Constitution, and the next applicable source is the UCMJ.<sup>7</sup> Courts-martial (military criminal trial courts) are governed by the UCMJ, and the UCMJ supersedes the Constitution when the rules are constitutional and provide more rights to the defendant than does the Constitution.

### Courts-Martial

The NCC familiarizes the fellow with the UCMJ and three different types of courts-martial (general, special, and summary). General courts-martial are similar to felony trials, special courts-martial are similar to misdemeanor trials, and summary courts-martial are analogous to a justice of the peace court.<sup>1</sup> The armed forces do not have permanently established trial courts for prosecuting military members. Courts-martial are convened (established) by commanders possessing the authority to do so, as they are needed. A military judge presides over the proceedings. In the military, the jury is referred to as a panel.

According to the MCM, RCM 921 defines deliberations and voting on findings, while RCM 1006 defines deliberations and voting on sentencing.<sup>6</sup> A vote of two-thirds of the court-martial panel members is needed before the accused may be found guilty of any offense for which the death penalty is not mandatory. If the

vote is less than two-thirds to convict, a verdict of not guilty is required. Due to this rule, the military does not experience "hung juries" as do civilian jurisdictions. Death penalty cases require a unanimous verdict for findings and sentencing, and a sentence for life imprisonment or confinement for more than 10 years in jail requires agreement by three-fourths vote. Although court-martial members are usually of different ranks, they are not permitted to use their rank to influence or pressure another member. When deliberating about a sentence, any court-martial member may propose a certain sentence. Voting is done by a secret, written ballot on each proposal. Once the sentence is announced, the court-martial is adjourned and the post-trial review processes begin. Testifying in a court-martial is similar to testifying in a civilian trial, but it is helpful to understand how the trial systems are different before entering the courtroom.<sup>6</sup>

### Command-Directed Mental Health Evaluations

Fellows in the NCC program also conduct command-directed mental health evaluations, which are governed by DoD Instruction 6490.04.<sup>8</sup> In the military system, a service member can be ordered to undergo a mental health evaluation by his or her superior (ie, a commander with authority to administer judicial punishment). Such evaluations are allowable because service members must maintain certain types of clearance, carry weapons, or deploy to austere environment (among other requirements). The commander's authority is not absolute, and the service member has due process rights under the directive. The commander must initially consult with a behavioral health provider to ensure that the reasons for the request are appropriate. Once the behavioral health provider approves the request, the commander must notify the service member in writing (using authorized forms) that he or she is ordering the service member to undergo a behavioral health evaluation. The commander must also inform the service member of the time and date of the evaluation.

The service member is provided an informed consent document to read and sign, and the behavioral health provider verbally explains the consent to the service member before the evaluation. The informed consent delineates several rights the service member has during the evaluation, including the right not to participate in the evaluation. Should the service member decide not to participate in the evaluation, the behavioral health provider will notify the commander of the service member's refusal to participate. The commander then consults with legal staff to determine a future course of action. If



the service member participates in the evaluation, the behavioral health provider will provide feedback to the commander in accordance with the local clinic policy (the service member is also provided feedback by the behavioral health provider in accordance with the local clinic policy). Psychiatrists, doctoral-level clinical psychologists, licensed clinical social workers possessing an MA or PhD, or psychiatric nurse practitioners conduct command-directed mental health evaluations. Commanders cannot order service members into behavioral health treatment.

### Involuntary Psychiatric Hospitalization

NCC fellows also have the opportunity to conduct an involuntary psychiatric hospitalization review (ie, military's version of civil commitment), which is also governed by DoD Instruction 6490.04. Two major differences exist between involuntary psychiatric hospitalizations reviews in the military and the civilian sectors: (1) involuntary psychiatric hospitalization and subsequent reviews are clinician-driven in the military, as opposed to judicially driven in civilian jurisdictions, and (2) there is no appellate process in the military system. If a service member is determined to be an imminent risk to himself or herself or to others, and/or has a mental illness that is causing a significant deterioration in functioning such that hospitalization is the least restrictive form of treatment, the psychiatrist can involuntarily hospitalize the person in a psychiatric unit of a military medical treatment facility (federal law governs this process). A service member cannot be involuntarily hospitalized in a civilian facility under the procedures outlined in DoD 6490.04; however, a service member can be committed to a civilian facility under applicable state laws and procedures regarding

civil commitment should a military medical treatment facility not be available. The service member receives written notification of the reasons for involuntary psychiatric hospitalization and the due process rights, which includes the right to recurring evaluations by a neutral, third party behavioral health practitioner to determine whether involuntary hospitalization should be continued.

The DoD instruction mandates that an independent physician conduct a review of continued need for involuntary psychiatric hospitalization within 72 hours of initial hospitalization. Because most nonpsychiatric providers are uncomfortable rendering an opinion about the continued need for psychiatric hospitalization, a psychiatrist almost always performs this review (unless there is only one psychiatrist at the facility). During the review, the independent reviewer informs the patient of the right to have legal counsel present if he or she so chooses. The reviewer creates a report that is placed in the service member's inpatient chart, and the service member is informed of the results of the review. If the service member requires continued involuntary psychiatric hospitalization, another review is conducted 5 business days after the 72-hour review. The report is again included in the patient chart and the patient is notified of the results. Subsequent reviews after the initial 5-day review are conducted every 5 business days until the service member no longer meets criteria for involuntary psychiatric hospitalization. The service member has no mechanism to appeal the reviewer's decision, unlike in civilian jurisdictions. Although the service member can consult with legal staff at any point during the involuntary hospitalization, there is no legal process in place to overturn the reviewer's decision.

### SUMMARY

Although the basic legal concepts are the same for military and civilian forensic psychiatry programs, there is a learning curve for becoming familiar with DoD directives, the UCMJ, and the military court system. The NCC program allows fellows to learn about DoD, Army, Air Force, and Navy directives that

pertain to behavioral health, the military systems and authorities, and evaluations that are specific to military criminal law. The NCC fellowship also provides the opportunity to consult with military psychiatrists, an essential resource to understand and navigate this system.

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